

### **Budget 2021: Key Customs & Indirect Tax Amendments**

The Ministry of Finance, Government of India introduced the Finance Bill, 2021 (“Bill”) on February 1, 2021 to give effect to the tax proposals of the Central Government for the Financial Year 2021-2022. The changes proposed under Bill relating to Customs and Indirect Tax, including are listed below.

All changes in rates of duty have come into effect from 2<sup>nd</sup> February 2021, in line with the declaration under the Provisional Collection of Taxes Act, 1931. The legislative changes, unless otherwise stated, come into effect upon the enactment of the Bill.

#### **Customs**

##### ***Tariff Changes***

- The First Schedule of the Customs Tariff Act, 1975 (“Tariff Act”) is amended / proposed to be amended in three phases, with effect from February 02, 2021, April 01, 2021 and January 01, 2022, including amendments to the Section / Chapter Notes.
- Customs duty rates have been changed or various items, including through amendments to exemption notifications issued under the Tariff Act.

**Impact** – The internationally recognized Harmonized System of Nomenclature is due to be amended in the year 2022. The proposed amendments are being made to align with the new HSN. These changes will result in rates of duty of customs as well as GST across sectors.

- The provisions of the Tariff Act in relation to anti-dumping duty, countervailing duty and safeguard duties have been amended *inter alia* to allow for anti-absorption, retrospective levy in anti-circumvention cases, imposition of anti-dumping duties for a period of up to five (5) years and aligning of anti -dumping duty provisions safeguard measures in respect goods cleared from 100% Export-Oriented Units (EOU) and Special Economic Zones (SEZ) into the domestic tariff area. Various procedural changes have also been brought about in the relevant rules.

##### ***Legislative Changes***

- Conditional exemptions, unless otherwise rescinded or varied, will expire at the end of the financial year immediately following two (2) years from the date of the exemption or variation.
- For conditional exemptions existing on the date the Bill receives the President’s assent, two (2) years will be calculated from February 1<sup>st</sup>, 2021.

**Impact** - Currently, exemption notifications under the Customs Act, 1962 are valid, unless specifically rescinded. The Bill proposes to amend Section 25 of the Customs Act, with a view to phase out outdated exemptions and reducing tariff distortions. This change does not impact exemptions which are absolute and not subject to conditions.

- The show cause notice in any customs inquiry or investigation is required to be issued within a period of two (2) years from the date of the initiation of the initial audit, search, seizure or summon., as the case may be.

- The limitation on customs inquiries and investigations is extendable by one (1) year by the Principal Commissioner / Commissioner of Customs, for sufficient cause being demonstrated.
- The limitation excludes the period for which stay is granted by a Court / Tribunal or the period taken to seek information from an overseas authority.

**Impact** – The current provisions do not prescribe a time limit for completion of departmental inquiries and issuance of notices in such cases. A new Section 28BB has been inserted to ensure such departmental proceedings are closed within a time limit. This amendment is prospective and does not impact any proceedings initiated before the date of the President’s assent to the Bill.

- The procedures for filing of Bills of Entry have been amended to provide that –
  - ✓ the filing of a Bill of Entry is to be completed before the end of the day preceding the date (including holidays) on which the goods arrive in India; and
  - ✓ the Board may, in cases as it deems fit, prescribe different time limits for filing of Bills of Entry.

**Impact** – These changes are procedural.

- The process for pre-trial disposal of goods in the case of gold, as notified, has been amended. The power to certify the correctness of inventory and carry out other procedures prior to disposal of the seized gold in a manner as may be determined by the Central Government, will lie with the jurisdictional Commissioner (Appeals).
- Inventories, photographs, and lists certified by a Commissioner (Appeals) in relation to seized gold has been included within the meaning of “document” having evidentiary value at the time of trial before Court. The provision relating to powers and duties conferred on the Commissioner (Appeals) have been accordingly amended.

**Impact** – These changes are procedural.

- Goods entered for exportation under a claim of remission or refund of any duty or tax or levy, with a view to make a claim in contravention of the Customs law provisions or any other law for the time being in force are now liable for confiscation under Section 113.
- Procurement of an invoice by fraud, collusion, wilful misstatement or suppression of facts to utilize input tax credit on the basis of such invoice for discharging any duty or tax on goods that are entered for exportation under claim of refund of any duty or tax will attract a penalty of up to five times the value of the refund claimed.

**Impact** – These changes have been made with a view to curb fake claims of refund of input tax credit. While these measures, along with other verification processes put in place by the Central Board of Indirect Taxes, are aimed at mitigating such false claims, it will need to be ensured that this does not become a hindrance for genuine claims of refund.

- A Common Customs Electronic Portal (CCEP) has been introduced for facilitation of registration with customs, and completion of processes such as filing of Bills of Entry, Shipping Bills or any other related documents payment of duties etcetera.

- Authorization or amendments to Bills of Entry, Shipping Bills and Bills of Export may also be completed electronically through the CCEP.
- Specific amendment can also be done by the importer / exporter on the CCEP.
- Service of order, summons, notice and other Customs communications may be completed by making it available on the CCEP.

**Impact** – This is an important procedural change. Presently, while amendments and changes to bill of entry are done on the system by Customs officers, the process is a tedious one. On the other hand, service of communications is either physical or routed through the Indian Customs Electronic Gateway (ICEGATE). These amendments will allow all aspects of customs engagements to be in one common portal.

### **Central Excise**

#### ***Tariff Changes***

- The Fourth Schedule of the Excise Act, 1944 is proposed to be amended in two phases, with effect from April 01, 2021 and January 01, 2022, including amendments to the Section / Chapter Notes.
- Rates of excise for specific products has been revised.

### **Agriculture Infrastructure and Development Cess**

A new Agriculture and Development Cess (“**AIDC**”) has been introduced, as a duty of customs, on all import into India, with effect from February 02, 2021. The First Schedule to the Tariff Act has also been amended to allow levy of the AIDC on all imported goods, at a rate not exceeding the rate specified under the First Schedule. The AIDC is, however, levied only on specific goods and all other goods stand exempted from this levy.

The AIDC has also been imposed as an additional duty of excise on branded and unbranded petrol and diesel.

Basic Customs Duty on imports and Basic Excise Duty and Additional Duty of Excise on petrol and diesel, on which the AIDC is levied have been suitably calibrated to keep the final impact the same.

### **Central Sales Tax**

- Goods intended for use in telecommunications or mining or in the generation or distribution of electricity or any other form of power have been excluded from the ambit of CST.

### **Central Goods and Services Tax (CGST)**

- A new Section 7 (1) (aa) is sought to be inserted after Section 7(1)(a) with retrospective effect from July 01, 2017.

**Impact** – The proposed insertion will make CGST applicable on those transactions involving supply of goods or services by any legal person, other than an individual, to its members or constituents, or vice versa, for cash, deferred payment or other valuable consideration. The parties to the transaction will be deemed to be two separate persons.

- A new Section 16 (2) (aa) is sought to be inserted after Section 16 (2)(a).

**Impact** – Input tax credit on an invoice or a debit note can only be availed henceforth when the details of the invoice/debit note have been communicated to their recipient and furnished in the statement of outward supplies.

- Section 35 is sought to be deleted.

**Impact** – It will no longer be necessary to have annual accounts be audited and for the reconciliation statement to be submitted by specified professionals.

- Section 44 is sought to be substituted.

**Impact** – As per the new Section 44, it will no longer be necessary to furnish an audited reconciliation statement. Annual returns can be filed on a self-certification basis and the Commissioner is now empowered to exempt a class of taxpayers from filing annual returns.

- The Proviso to Section 50 (1) is sought to be substituted with retrospective effect from 01.07.2017.

**Impact** – Interest is payable on net cash liability from July 01, 2017.

- An Explanation to Section 75 (12) is sought to be inserted.

**Impact** – “Self-assessed” tax to now include the tax payable in respect of details of outward supplies but not included in the returns furnished.

- Section 83 (1) is sought to be substituted.

**Impact** – Property attached during proceedings initiated under Chapter XII, Chapter XIV or Chapter XV will remain attached until the expiry of a period of one year from the date of the order of attachment.

- Section 152 (1) is sought to be substituted in part and Section 152 (2) is sought to be omitted.

**Impact** – No information obtained under Section 150 and Section 151 cannot be used for any proceedings under the Act without an opportunity of hearing being given to the person concerned.

#### **Integrated Goods and Services Tax (IGST)**

- Section 16 (1)(b) is sought to be amended in part. Section 16 (3) is sought to be substituted and Section 16 (4) is sought to be inserted.

**Impact** - The zero-rated supply on payment of IGST is now restricted only to specified class of taxpayers or specified supplies of goods or services. The foreign exchange remittance in case of export of goods has been linked with the refund and zero rating of supplies made to special economic zone has been further restricted to only when such supplies are for authorised operations.